

STATE OF MICHIGAN
COURT OF APPEALS

JEFFREY EDWARDS,

Plaintiff-Appellee,

v

MUSANGI MUTHUI,

Defendant-Appellant.

UNPUBLISHED

August 19, 2008

No. 278479

Macomb Circuit Court

LC No. 2006-004935-NZ

Before: Schuette, P.J., Zahra and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right from the order of the circuit court granting plaintiff a default judgment. We affirm. This case is being decided without oral argument in accordance with MCR 7.214(E).

Plaintiff, a schoolteacher, was married to, and bitterly divorced from, defendant's sister. Plaintiff obtained primary physical custody of the child of the marriage, partly because of his ex-wife's and her agents' false allegations against him intended to impair his access to the child. See *Edwards v Muthui-Edwards*, unpublished opinion per curiam of the Court of Appeals, issued August 30, 2007 (Docket No. 274315).

Defendant wrote to plaintiff's principal and other educational authorities accusing plaintiff of a history of inappropriate behavior in the classroom, and of sexual misconduct and domestic abuse outside the classroom. Plaintiff filed suit, asserting libel, false light, and intentional infliction of emotional distress. After many failures of personal service, inducing the process server to opine that defendant was evading service, the trial court authorized alternate service. Defendant never responded to the mailings that ensued, until, by her own account, she received mailed notice of the default judgment two weeks after it was entered.

Defendant filed a claim of appeal, but never sought to have the default or default judgment set aside below. On appeal, defendant does not challenge the trial court's decision to proceed to default judgment, but instead asserts that she had received inadequate notice of the proceedings, that plaintiff failed to prove liability, and that the award of damages was not reasonable in light of the evidence offered.

The argument relating to notice would have been germane to a motion to set aside the default judgment, had one been filed. Defendant, who admits receiving notice two weeks after

the judgment was entered, had time and opportunity to seek to have it set aside, see MCR 2.603 and MCR 2.612, but she instead eschewed the trial court entirely, apparently hoping to litigate attendant issues for this first time in this Court. Defendant misapprehends the law. In light of the specificity of the court rules governing defaults, the lack of a decision from the trial court on a motion to set aside the default or default judgment leaves this Court with nothing to review.

Because the default and default judgment thus remain in place, the consequences that defendant has lost her opportunity to defend either liability or damages likewise remain in place. See *Michigan Bank-Midwest v D J Reynaert, Inc* 165 Mich App 630, 648; 419 NW2d 439 (1988), citing MCR 2.603(A)(3).

Affirmed.

/s/ Bill Schuette

/s/ Brian K. Zahra

/s/ Donald S. Owens